

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON DOYLE,

Plaintiff,

v.

WILLIAM GONZALES; DAN W.
DOPPS; SCOTT D. JONES; and
the CITY OF QUINCY,
WASHINGTON,

Defendants.

NO. CV-10-30-EFS

**ORDER RULING ON PENDING
MOTIONS**

A. Mora Report

The Court has been asked to determine the discoverability of the Mora Report on a number of occasions. Most recently, on December 22, 2011, the Court ruled that Defendant City of Quincy ("City") waived the attorney-client privilege attached to the Mora Report by showing it to the subject of the investigation, Chief William Gonzales. ECF No. [554](#). Accordingly, the Court ordered the City to disclose the report to Plaintiff Aaron Doyle by January 5, 2012. In lieu of disclosing the report, the City and other Defendants (collectively, "Defendants") ask the Court to either reconsider its ruling or to stay this lawsuit to allow Defendants to seek an interlocutory appeal on the issue of whether the Mora Report must be disclosed to Mr. Doyle. ECF Nos. [556](#) & [561](#). Mr. Doyle asks the Court to strike Defendants' reconsideration motion because

1 it was filed one day late and exceeds the ten-page limit by one page.
2 ECF No. [559](#). After reviewing the submitted material and relevant
3 authority, the Court is fully informed and denies the pending motions.

4 First, under the circumstances, the Court denies Mr. Doyle's request
5 to strike the reconsideration motion; the Court will consider Defendants'
6 reconsideration motion.

7 Second, after considering Defendants' arguments in support of
8 reconsideration, the Court denies reconsideration of its Order requiring
9 Defendants to produce the Mora Report. Reconsideration is an
10 "extraordinary remedy, to be used sparingly in the interests of finality
11 and conservation of judicial resources." *Kona Enters., Inc. v. Estate of*
12 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). When reviewing a motion for
13 reconsideration of an interlocutory order, the Court considers the
14 following factors:

15 1) There are material differences in fact or law from those
16 initially presented to the Court, which could not have been
previously discovered through reasonable diligence;

17 2) There are new material facts that happened *after* the Court's
18 decision;

19 3) There has been a change in the law *after* the Court's decision;
or

20 4) The movant makes a convincing showing that the Court failed to
21 consider previously-presented material facts.

22 *See Motorola, Inc. v. J.B. Rodgers Mech. Contractors*, 215 F.R.D. 581, 586
23 (D. Ariz. 2003) (surveying relevant local rules for districts throughout
24 the Ninth Circuit). None of these conditions are satisfied here. The
25 legal arguments presented by Defendants were previously fully considered
26 by the Court; the Court abides by its decision. Defendants'
reconsideration motion is denied.

1 Third, interlocutory orders may be appealed if the Court is "of the
2 opinion that such order involves a controlling question of law as to
3 which there is substantial ground for difference of opinion and that an
4 immediate appeal from the order may materially advance the ultimate
5 termination of the litigation." 28 U.S.C. § 1292(b). The questions of
6 whether the Mora Report is protected by the attorney-client privilege
7 and, if so, whether that privilege was waived, are questions of law. The
8 Court concludes there are not substantial grounds for difference of
9 opinion on these questions of law. Therefore, there is no basis for an
10 interlocutory appeal, and the Court will not stay production of the Mora
11 Report. Accordingly, Defendants' interlocutory-appeal request and
12 related stay request are denied.

13 For the above given reasons, the Court denies Defendants' Motion for
14 Reconsideration of Order, or Alternatively to Authorize Appeal and Stay
15 Enforcement of Order, ECF No. [556](#), and Motion to Authorize Appeal and
16 Stay Enforcement [of] Order, ECF No. [561](#).

17 **B. Documents Currently Filed Under Seal**

18 On December 21, 2011, the Court ordered Defendants to file a motion
19 to seal certain previously-filed-under seal documents so that the Court
20 could determine whether sealing of such documents is necessary. ECF No.
21 [21](#). Rather than file a motion, Defendants filed a response to the
22 Court's Order, explaining that they did not believe the documents need
23 to be sealed but rather filed them under seal as a matter of caution
24 given the concern previously articulated by Mr. Doyle, and as recognized
25 by the Court, that Mr. Doyle's Sierra County personnel records are
26

1 protected documents. ECF No. [565](#). Mr. Doyle asks the Court to strike
2 Defendants' response as not being compliant with the Court's Order.

3 Given Defendants' position relating to these documents, the Court
4 construes Defendants' Response, ECF No. [565](#), as a Motion to Unseal ECF
5 Nos. 507, 508, 509, 510, and 511. Mr. Doyle's response to this construed
6 motion must be filed in accordance with Local Rule 7.1, based on the date
7 of this Order.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Defendants' Motion for Reconsideration of Order, or
10 Alternatively to Authorize Appeal and Stay Enforcement of Order, **ECF No.**
11 [556](#), is **DENIED**.

12 2. Mr. Doyle's Motion to Strike, **ECF No.** [559](#), is **DENIED**.

13 3. Defendants' Motion to Authorize Appeal and Stay Enforcement
14 [of] Order, **ECF No.** [561](#), is **DENIED**.

15 4. Mr. Doyle's Motion to Strike Defendants' Memorandum in Response
16 to Order Requiring Defendants to File Motion to Seal, **ECF No.** [566](#), is
17 **DENIED**.

18 5. Defendants' Memorandum in Response to Order Requiring
19 Defendants to File a Motion to Seal, **ECF No.** [565](#), is **CONSTRUED** as a
20 Motion to Unseal ECF Nos. 507, 508, 509, 510, and 511.

21 **IT IS SO ORDERED.** The District Court Executive is directed to enter
22 this Order and to provide copies to counsel.

23 **DATED** this 5th day of March 2012.

24
25 S/ Edward F. Shea

EDWARD F. SHEA

26 United States District Judge

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